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IV. UNBUNDLED NETWORK ELEMENTS

Sweeping aside existing rules and Commission findings and ignoring on-going Commission and Court proceedings, the Petitioners press forward with numerous requests to use Verizon VA's network and to access its unbundled network elements (UNEs) in unprecedented and illegitimate ways. Their list of demands violates time and again the Commission's holding that this arbitration would apply existing law and not change the law or anticipate results from other pending dockets:

> this isn't going to be the forum for the commission to reconsider existing law.... We will not, in fact, reconsider an issue that the Commission may have pending before it to reconsider. We will look at the existing state of the law and apply that state of the law.[1]

Specifically in disregard of this Commission ruling, the Petitioners, among other things:

- demand new UNE combinations and ignore the Eighth Circuit's ruling and the Commission's explicit deference to that ruling during the pendency of the appeal at the Supreme Court

- demand that access to EELs be required notwithstanding the *UNE Remand Order* and its supplements and the pending *Fourth FNPRM* in CC Docket No. 96-98 (WorldCom)

- demand nullification of service termination liabilities set forth in Verizon VA's lawfully filed tariff

- demand access to multiplexing and the digital cross-connect system as if they were stand-alone UNEs, even though they are not

- demand access to dark fiber at locations other than accessible terminals; demand construction of new dark fiber and new continuous routes when only existing facilities need to be made available; demand enhanced electronics when dark fiber is, by definition, unlit and demand expansion of the UNE dark fiber to all "unused transmission media"

[1] Status Conference at 13 (July 10, 2001).

- demand access to Verizon VA's LIDB database at UNE TELRIC rates for its interexchange affiliate thereby negating the careful distinction drawn by Congress and the Commission between local and access markets (WorldCom)

- demand provisions in the interconnection agreement for directory assistance in contravention of the Parties' existing agreement for directory assistance valid until at least November 30, 2004, and dispute the Parties' Settlement Agreement that absolutely forbids inclusion of directory assistance issues in this arbitration (WorldCom)

- demand a complete CNAM database "dump" when only per-query-access is specifically allowed (WorldCom)

- demand alternative provisions for customized routing that are not relevant to Verizon VA given its Advanced Intelligent Network (WorldCom)

- demand a complete overhaul of intercarrier compensation for intraLATA and local calls and calls to and from UNE-P customers when these issues are the subject of the Commission's intercarrier compensation rulemaking in CC Docket 01-92 (AT&T).

Moreover, the Petitioners demand provisions that go beyond industry practice as to local number portability, unbundling of loops currently provisioned over integrated digital loop carriers, provision of special construction for transport redundancy and access to Verizon VA's network by third parties.

The Petitioners inappropriately clutter this arbitration with numerous UNE issues that clearly go beyond existing law and infringe on pending proceedings. The Commission should reject the Petitioners' expansive and illegitimate requests.

Issue III-6 **UNE Combinations**

AT&T: Under the FCC's Rules as currently in effect, must Verizon provide to AT&T new combinations of UNEs that Verizon ordinarily combines for itself, and under what rate terms and conditions must it provide them?

WorldCom: Should the Interconnection Agreement include provisions specifying that 1) Verizon shall offer each Network Element individually or as Technically Feasible combinations of network elements, including the combination of all network elements, also known as Network Element Platform; 2) Verizon shall not separate Network Elements that are already combined on Verizon's network unless requested by MCIm and that services provided through combinations of Network Elements or UNE-P will not be disconnected, interrupted, or otherwise modified in order for customers to migrate to MCIm; 3) Verizon's charge to MCIm for any combination may not exceed the TELRIC price for the sum of Network Elements that comprise the combination; and 4) at MCIm's request and where Technically Feasible, Verizon shall provide Combinations of Network Elements whether or not those Network Elements are currently combined in Verizon's network.

A. OVERVIEW

Verizon VA provides combinations of UNEs in compliance with applicable law, as the Commission has repeatedly found.[2] The AT&T and WorldCom proposals ignore (1) the Eighth Circuit's rulings that vacated the Commission's Rules 315(c)-(f) and (2) the Commission's pronouncements that the Eighth Circuit's rulings were in effect unless and until they were overruled. No contractual language should be included in the proposed interconnection agreements that would resurrect the vacated rules. Verizon VA's change of law provisions in the proposed interconnection agreements will adequately address the possible reinstatement of the vacated rules by the Supreme Court.

[2] *NY Verizon § 271 Order* at ¶¶ 232-33; *MA Verizon § 271 Order* at ¶¶ 117, 119; *PA Verizon § 271 Order* at ¶ 73.

B. DISCUSSION

1. Applicable Law does not require Verizon VA to provide combinations that are not currently combined.

The Eighth Circuit unambiguously rejected the "additional-combinations" rules set forth in 47 C.F.R. § 51.315(c)-(f):

> Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who "shall combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the Commission's rule. See 47 C.F.R. 51.315(c). We reiterate what we said in our prior opinion: "[T]he Act does not require the incumbent LECs to do all the work." *Iowa Utilities Bd.* 120 F.3d at 813.[3]

The Eighth Circuit's ruling is on appeal to the Supreme Court, but in the meantime has not been stayed and is binding on the Commission under the terms of the Hobbs Act.[4] As a result, the Commission announced in the *UNE Remand Order* and again in this proceeding its intention not to revisit these vacated rules pending a decision by the Supreme Court. Even before the Eighth Circuit re-affirmed the rejection of these rules, the Commission stepped back from this issue:

> A number of commenters argue that we should reaffirm the Commission's decision in the *Local Competition First Report and Order*. In that order the Commission concluded that the proper reading of "currently combines" in rule 51.315(b) means "ordinarily combined within their network, in the manner which they are typically combined." Incumbent LECs, on the other hand, argue that rule 51.315(b) only applies to unbundled network elements that are currently combined and not to elements that are "normally" combined. Again, because this matter is currently

[3] *Iowa Utilities II*, 219 F.3d at 759.

[4] Specifically, the Court granted certiorari to consider "[w]hether 47 U.S.C. § 251(c)(3) prohibits regulators from requiring that incumbent local telephone companies combine certain previously uncombined network elements when a new entrant requests the combination and agrees to compensate the incumbent for performing the task." 121 S. Ct. 877 (2001).

> pending before the Eighth Circuit, we decline to address these arguments at this time.[5]

Moreover, the Commission confirmed its intention to maintain this position in this proceeding. At the Status Conference, Arbitrator Attwood stated unequivocally that "...this would not be the place for us to change the decision of the 8th Circuit...."[6]

Ignoring these Commission admonitions, AT&T and WorldCom press on with their effort to modify the Eighth Circuit's ruling, asking the Commission

> to clarify that the 'currently combine[d]' standard, as used in the Commission's rules, includes such UNEs as are ordinarily, commonly or regularly combined in Verizon's network, whether or not they are actually combined for the particular customer or location that AT&T seeks to serve.

AT&T Ex. 2 at 2. This remains a direct attack on the Eighth Circuit's repeated rejection of Rules 315(c)-(f) because it would require Verizon VA to combine elements that are not already combined.[7]

Similarly, WorldCom asks the Commission to order Verizon VA to provide combinations it "ordinarily combines"-- despite the Eighth Circuit's express holding that incumbents need not combine elements that are not already combined-- claiming that requesting combinations "as they are ordinarily combined in the ILEC network obviously raises no question of technical

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[5] *UNE Remand Order* at ¶ 479 (footnotes omitted).

[6] Status Conference at 26 (July 10, 2001).

[7] Obviously sensing that the Commission means what it has repeatedly said and would not disturb the Eighth Circuit's rejection of Rules 315(c)-(f), AT&T urges the Commission to impose new obligations as might a state commission "beyond those contained in the Commission's [FCC's] regulations." AT&T Ex. 2 at 3. The Commission, however, rejected that position: "we would be disinclined to act beyond the authority of the FCC in acting like a state ..." and "I can tell you we're disinclined to exercise that authority." Status Conference at 36 (July 10, 2001).

feasibility." WorldCom Ex. 5 at 9. Section 251(c)(3) of the Act, however, specifically contemplates that requesting carriers take the incumbent's network as they find it, and, when necessary, the requesting carriers would "combine elements in order to provide ... telecommunications services." Congress envisioned that competitors, not incumbents, would be responsible for combining elements for their own use. Thus, the current rule is straightforward: Verizon VA must provide currently combined combinations of UNEs to the CLECs. Otherwise, UNEs will be provided to the CLECs and they can combine the elements if they choose to do so to offer telecommunications services.

WorldCom argues that Rules 315(a) expands to fill the void created by the vacating of Rules 315(c)-(f) and thus supports its desire to obtain all combinations "ordinarily combined." WorldCom Ex. 5 at 8-9. Rule 315(a) is silent, however, as to combinations that must be offered by the ILEC but instead emphasizes the responsibility of CLECs to combine UNEs:

> 315(a). An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

Rule 315(b) obligates the ILEC not to "separate" elements that already are combined. These two rules are all that remain of original Rule 315 and do not support in any way WorldCom's desire for Verizon VA to provide UNE combinations not currently combined.

2. Combinations Offered by Verizon VA

Verizon VA offers several types of existing UNE combinations,[8] and the Commission repeatedly has found that these offerings fully comply with the requirements in the Act.[9] The

[8] *See* Verizon VA Ex. 1 at 4.

most common of these is a combination of loop, switching, and transport commonly called UNE-P, and a combination of loop and transport, commonly called an enhanced extended link or EEL. *Id.*; Tr. 190. Verizon VA also has voluntarily offered a new UNE-P combination

> at new and existing locations where facilities are available and currently combined, even though retail service has not been networked over those facilities, provided that no new construction is required to do so and the CLEC pays any non-recurring charges associated with activating the facilities.

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[9] *NY Verizon § 271 Order* at ¶¶ 232-33 ("The record indicates that Bell Atlantic, as required by the New York Commission, provides a variety of methods that allow competitive carriers to combine unbundled network elements with their own facilities. For example, in addition to the standard physical and virtual collocation arrangements, Bell Atlantic provides alternative collocation arrangements such as smaller physical collocation cages, shared collocation cages, and cageless collocation arrangements. The record also indicates that Bell Atlantic, as required by the New York Commission, provides access to preassembled combinations of network elements. For example, Bell Atlantic has provided to competitors more than 152,000 preassembled platforms of network elements, including the loop switch combination (UNE-P) out of certain central offices, as well as local switching elements in combination with other shared elements, such as shared transport, shared tandem switching, operator services, directory assistance, and SS7 signaling. In addition, Bell Atlantic provides Enhanced Extended Loops (EELs), a combination of loops and transport. All of these combinations are offered in accordance with the New York Commission's requirements."); *MA Verizon § 271 Order* at ¶ 117 ("In this section, we conclude that Verizon provides nondiscriminatory access to combinations of UNEs. The record indicates first that Verizon provides access to UNE combinations, and second that it provides access to UNEs in a manner that allows requesting carriers to combine those elements."), ¶ 119 ("Verizon provides a variety of methods that allow competing carriers to combine UNEs. In addition to standard physical and virtual collocation arrangements, Verizon provides alternative collocation arrangements such as smaller physical collocation cages and cageless collocation arrangements, any of which may be used by competing carriers to combine UNEs."); *PA Verizon § 271 Order* at ¶ 73 ("In order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier. We conclude, based upon the evidence in the record, that Verizon demonstrates that it provides nondiscriminatory access to network element combinations as required by the Act and our rules. We note also that the Pennsylvania Commission found Verizon's provisioning of UNE combinations was compliant with the requirements of this checklist item.").

Verizon VA Ex. 1 at 4. Verizon VA agreed to develop a contractual provision to add this UNE-P offering to its interconnection agreement. Tr. 63-64. This proposal will be set forth in the interconnection agreement.

C. CONTRACT PROPOSALS

1. AT&T

AT&T offered new contract language in its § 11.7.4 on combinations through Witness Pfau.[10] AT&T Ex. 2 at 4-5. The proposal is a boundless and unwarranted wish list that would not be acceptable even if the Eighth Circuit's rejection of Rules 315(c)-(f) were reversed. For example, AT&T would require Verizon VA to combine a network element with any other network element or "other service (including Access Services) obtained from Verizon or with compatible network components provided by AT&T or provided by third parties to AT&T." *Id.* at 4. That requirement is as broad as the imagination and far beyond even the requirements of vacated Rule 315(c) that would have required combining "unbundled network elements in any manner." There is no hint in the vacated regulations--much less in the currently effective regulations--that Verizon VA must combine network elements with "services" or with anything called "network components provided by third parties…." *Id.* Moreover, whatever the nature of these combinations, AT&T would limit Verizon VA's remuneration to "the direct economic costs of efficiently providing such combinations." *Id.* The term "direct economic cost" adds a new and undefined costing methodology to the already crowded and disputed cost arena under the Act. In addition, determining if these new proposed combinations were "efficiently"

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[10] AT&T has resurrected this issue. In its Petition filed April 23, 2001, AT&T did not indicate that § 11.7.4 was in dispute. Likewise, Verizon VA's May 31 filing also did not list this language as being in dispute. AT&T has now changed § 11.7.4 and created an issue that had been resolved in negotiations on January 28, 2001.

provided is yet another frontier. Finally, AT&T tosses into the contractual provision two new unexplained adjectives for UNEs: "contiguous" and "non-contiguous." *Id.*

AT&T's § 11.7.4 must be rejected because it is directly contrary to the Eighth Circuit's rulings on combinations. Moreover, it imposes obligations on Verizon VA that also go beyond even the Commission's previous Rules 315(c)-(f). Section 11.7.4 contains undefined and previously unused new terms (*e.g.*, "direct economic cost," "contiguous unbundled Network Elements" and "non-contiguous unbundled Network Elements") and would require Verizon VA to cater to every AT&T whim, a requirement clearly rejected by the Eighth Circuit.[11]

2. WorldCom

WorldCom proposed to change Attachment III, §§ 2.4 and 2.4.1, but retained the provision in § 2.4 that Verizon VA must combine "Network Elements ordinarily combined in its network, whether or not those Network Elements are currently combined in Verizon's network." WorldCom Ex. 5 at 4-5. This provision is inconsistent with the Eighth Circuit's ruling that only UNEs currently combined must be provided to a CLEC.[12] WorldCom's proposal is also at odds with the Commission's *Supplemental Order Clarification* in that the language is so broad that it requires the provision of combinations of loop/transport without any reference to, or limitation resulting from, the local use requirements imposed by the Commission prior to the conversion of special access services to loop/transport (EELs).[13] Obviously, §§ 2.4 and 2.4.1 are flawed and

[11] *Iowa Utilities I*, 120 F.3d at 813 ("The fact that interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others: it does not mandate that incumbent LECs cater to every desire of every requesting carrier.").

[12] The pricing provisions in § 2.4 will be subject to the cost phase of this proceeding.

[13] *Supplemental Order Clarification* at 21-24.

would need to be limited to the provision of combinations required by applicable law. Substantively, the self-triggering mechanism in § 2.4.1 for a change of law if "analogous rule(s)" to Rules 315(c)-(f) are promulgated by the Commission also will lead to confusion as to what are "analogous rule(s)." Moreover, there is no basis for a unique change of law provision. Section 2.4.1 is thus inappropriate and ought not be mandated by the Commission.

3. Verizon VA

a) AT&T

Verizon VA proposes to provide combinations consistent with applicable law and "include all of the Network Element's features, functions and capabilities in a manner that allows AT&T to provide any Telecommunication Services. ..." Verizon proposed AT&T contract, § 11.0. AT&T does not dispute § 11.0. In addition, § 11.12 on Combinations sets forth how Verizon VA will provide to AT&T existing combinations, such as UNE-P and EELs to AT&T. Moreover, Verizon VA has proposed new contractual provisions in § 11.12.1 to provide for new UNE-P combinations even though service previously had not been provided over those facilities. *See* Verizon VA Ex. 1 at 4.

b) WorldCom

Verizon VA would provide UNE combinations to WorldCom pursuant to § 16 of the UNE Attachment to its proposed interconnection agreement with WorldCom. Verizon VA would provide such combinations as required by applicable law and will change the provisioning of UNEs as applicable law changes pursuant to § 1.4 of the UNE Attachment to its proposed interconnection agreement. The Verizon VA proposal to provide UNE combinations subject to applicable law and to do so efficiently in a collaborative manner is well suited to the changing dynamics of the telecommunications industry. The Supreme Court's consideration of the Eighth

Circuit's ruling on combinations is an excellent example of the wisdom of this process. If the Commission's vacated rules are reinstated in some fashion, the change in law provisions of the interconnection agreements will be triggered and the changes can be made efficiently. On the other hand, if contracts with CLECs contained different provisions as to the effect of changes in law on UNE combinations, each contract would require a customized amendment and the process would be overwhelming. Verizon VA's proposed contractual language should be adopted as the appropriate balance.

Verizon VA proposes an "anti-gaming" provision in its proposed interconnection agreement with WorldCom to assure fair implementation of the Eighth Circuit's rulings on combination offerings:

> § 1.2 ... **Consistent with the foregoing, should **CLEC engage in a pattern of behavior that suggests that **CLEC either i) knowingly induces Verizon Customers to order Telecommunications Services from Verizon with the primary intention of enabling **CLEC to convert those Telecommunications Services to UNEs or Combinations, or ii) itself orders Telecommunications Services from Verizon without taking delivery of those Telecommunications Services in order to induce Verizon to construct facilities that **CLEC then converts to UNEs or Combinations, then Verizon will provide written notice to **CLEC that its actions suggest that **CLEC is engaged in a pattern of bad faith conduct. If **CLEC fails to respond to this notice in a manner that is satisfactory to Verizon with fifteen (15) business days, then Verizon shall have the right, with thirty (30) calendar days advance written notice to **CLEC, to institute an embargo on provision of new services and facilities to **CLEC. This embargo shall remain in effect until **CLEC provides Verizon with adequate assurances that the bad faith conduct shall cease. Should **CLEC repeat the pattern of conduct following the removal of the service embargo, then Verizon may elect to treat the conduct as an act of material breach in accordance with the provisions of this Agreement that address default.

Witness Antoniou testified that Verizon VA's intent is to prohibit a CLEC from inducing a Verizon VA customer "to order services from Verizon so [the] CLEC can then flip them" immediately thereby giving the CLEC access indirectly to a new combination that the CLEC itself lawfully could not obtain directly. Tr. 75. The intent is not to prohibit in any way customer migration to a CLEC and the proposed anti-gaming contractual provision would not apply when a customer simply chooses to order services that require construction of facilities, and later decides to change carriers. Tr. 79.

Issue III-7 **Service Conversions to UNEs**

Issue VII-11 **Ordering Requirements**[14]

AT&T: Does Verizon VA have the right to impose operational requirements, in addition to the interim use restrictions on the conversion of special access to UNE combinations prescribed by the Commission, that further limit AT&T's ability to connect a UNE or UNE combination to other services, such as the retail and wholesale offerings of Verizon VA?

Sub Issue III-7-A Where AT&T requests that existing services be replaced by UNEs and/or UNE Combinations, may Verizon physically disconnect, separate, alter or change in any other fashion the equipment or facilities that are used, without AT&T's consent?

Sub Issue III-7-B Must Verizon VA implement an ordering process that enables AT&T to place a bulk order for the conversion of services to UNEs or UNE Combinations?

Sub Issue III-7-C Should AT&T be bound by termination liability provisions in Verizon VA's contracts or tariffs if it converts a service purchased pursuant to such contract or tariff to UNEs or UNE Combinations?

WorldCom: Is WorldCom entitled to order combinations of the loop and transport unbundled network elements for the provision of telecommunications services? Can restrictions be placed on the use of unbundled network elements used in the provisions of telecommunications services?

A. OVERVIEW

During the recent hearings in this case, Verizon VA indicated that it would provide new language responsive to the Petitioners' concerns regarding (1) the possibility of service disruptions in connection with conversions of special access services to EELs and (2) the process for bulk ordering of such conversions. As further described below, Verizon VA has, in fact,

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[14] Issue VII-11 is identical to Issue III-7(b). Verizon VA has stated the issue as follows:

> Should AT&T be permitted to require Verizon VA to follow various AT&T ordering requirements for the provision of Verizon VA's combined UNEs?

Issue VII-11 will be addressed in the same section as III-7(b). AT&T Ex. 2 at 22.

provided such language. Accordingly, it appears that the parties may be close to resolving these two issues.

With respect to the issue of the general terms under which Verizon VA processes conversion requests, Verizon VA will process such requests in a manner consistent with applicable law, most particularly the Commission's recent *Supplemental Order Clarification.* Verizon VA must be able to maintain ordering processes that benefit all requesting carriers equally and not be forced to compromise the quality or efficiency of its service for the sole benefit of individual carriers.

Finally, the Commission has repeatedly held that AT&T (and each other carrier) is liable for all termination liabilities as prescribed by Verizon VA's FCC Tariff No. 1, § 7.4.13(A) when it terminates special access services. Accordingly, the Commission should reject AT&T's attempt in this arbitration to circumvent lawful tariff termination liabilities. Furthermore, the Commission should reject AT&T's proposed language in § 11.13 in its entirety as it broadly and inappropriately applies to all service conversions to UNEs or combinations. Verizon VA has proposed in its § 11.13 language that is consistent with applicable law and should address AT&T's concerns with respect to special access conversions to EELs.

B. DISCUSSION

1. General Issue of Conversions

Verizon VA will convert existing special access services to the UNE loop/transport combinations (EELs) in compliance with the Commission's *Supplemental Order Clarification.* That Order requires conversions after the CLEC self-certifies that it is providing to the particular end user a "significant amount of local exchange service" as defined precisely by the

Commission.[15] AT&T has accepted the Commission's ruling that this arbitration is not the proper proceeding in which to re-argue the "local use restrictions" from the *Supplemental Order Clarification*.[16] WorldCom, on the other hand, has rejected the Commission's ruling and has requested that the Commission ignore its *Supplemental Order Clarification* and find that WorldCom "is impaired unless it obtains unbundled access to EELs." WorldCom Ex. 5 at 17. The Commission has held already in this proceeding that it "would be disinclined to act beyond the authority of the FCC in acting like a state."[17] Moreover, the Commission is currently considering the issue of conversions in the *Fourth FNPRM*[18] and further has held in this proceeding that it "will not, in fact, reconsider an issue that the commission may have pending before it to reconsider."[19] For all of these reasons, the Commission should reject WorldCom's attempt to ignore the *Supplemental Order Clarification* and reargue in this arbitration the parameters of converting special access services to EELs.

The Commission did, however, agree to arbitrate "implementation issues left" after eliminating issues already decided by the Commission or still pending before the Commission or

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[15] *Supplemental Order Clarification* at ¶ 21; Verizon VA Ex. 2 at 18, n. 14.

[16] "Based on the request of the Arbitrator at the pre-hearing conference, the issue related to conversion of services to UNE combinations was restated to avoid re-litigation of the use restriction itself." AT&T Ex. 2 at 13.

[17] Status Conference at 36 (July 10, 2001).

[18] *Implementation of Local Competition Provisions of The Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999).

[19] Status Conference at 13 (July 10, 2001). WorldCom also argues that new EELs--new combinations of loop and transport--must be provided pursuant to Commission Rule 315(a). This argument is an end-run around the vacated Rules 315(c)-(f), was rejected by the Commission in its *UNE Remand Order* and is refuted in the discussion of Issue III-6, *infra*.

the Supreme Court.[20] AT&T Witness Pfau argued that "supporting operational processes" should not be disrupted as a result of these UNE conversions. AT&T Ex. 2 at 19. Verizon VA does not intend to disrupt operational processes as a result of UNE conversions from special access services to EELs. Verizon VA Witness Fox stated that "there is probably very little difference in what we would do for a DS1 or DS3 EEL compared to special access." Tr. 250. Ms. Fox further clarified that the use of the Operation Support System (OSS), that is, how requests are inputted into the Verizon VA system, is not an issue. Tr. 260. As to Verizon VA's provisioning and maintenance of UNEs, however, that process will match the UNE combination to the equivalent retail service.[21]

The equivalent retail service to an EEL is a voice grade dial tone line. Tr. 262-63. The EELs therefore will be maintained as retail dial tone lines are maintained. Tr. 258. This treatment comports with the "parity" requirement in Rule 311(b) that UNEs must be provided "at least equal in quality to that which the incumbent provides to itself." Thus, AT&T's local customers served through EELs and Verizon VA's local exchange customers will receive equivalent maintenance and repair service.

2. Service Disruption During Conversions (Sub-Issue III-7(a))

Verizon VA will not disrupt existing services during conversion except when necessary. AT&T Witness Pfau insisted that there can be no physical disruption of any existing service and/or facilities during a conversion to UNEs. AT&T Ex. 2 at 16-18. AT&T's proposed

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[20] *Id.* at 57.

[21] *See UNE Remand Order* at ¶ 431.

interconnection agreement repeats this absolute prohibition on even momentary service interruptions during any conversion:

> Replacement of Services with Unbundled Network Services
>
> . . .
>
> § 11.13.2 When any existing service employed by AT&T is replaced with Network Elements (including Combinations), Verizon shall not physically disconnect, separate, alter or change in any fashion equipment and facilities employed to provide the service being replaced, except at the request of AT&T.
>
> . . .
>
> § 11.13.4 ...Verizon shall facilitate all conversions requested by AT&T without disruption of service.

Verizon VA testified, however, that there are limited situations in which it could be necessary to interrupt service to complete the conversion requested:

> Verizon VA would expect most service conversions to be completed without disconnecting service to the customer and this is especially so with regard to allowed conversions from special access service to UNE combinations of loops and dedicated transport. There are, however, situations when it could be necessary for Verizon VA to disconnect its equipment or facilities in order to complete a request for the conversion to UNEs. For example, when an end-user is served over an integrated digital loop carrier (IDLC) and the CLEC orders a UNE loop to serve that customer, Verizon VA will need to provide a different loop to serve that customer. Another example in which some minimal interruption will always occur is during an unbundled loop "hot cut" where a "live" Verizon VA dial-tone customer's loop is disconnected from Verizon VA's switch, and re-connected to the CLEC's collocated equipment (which carries the CLEC's dial-tone).

Verizon VA Ex. 23 at 18; *see* Tr. 94.

Oddly, despite AT&T's absolute "no interruption" contract language, AT&T Witness Pfau accepted the possibility of a "physical disruption" as a result of the change from Verizon VA retail service to UNE-L (loop) and that Centrex to UNE-P conversions may involve physical disruption. Mr. Pfau believed that AT&T's contract language does not apply to situations that have nothing to do with the conversion of special access to EELs. AT&T Ex. 2 at 16-18. Witness Pfau is wrong; AT&T's contract language in §§ 11.13.2 and 11.13.4 is substantially broader than special access-to-EEL conversions and should not be adopted. Verizon VA agrees that it will "cooperate in every way to avoid disruptions of service" but a blanket contract provision that there can ***never*** be a physical interruption when undertaking conversions is "too restrictive" in the real world. Tr. 246. Verizon VA has revised its proposed language in § 11.13 to clarify that no interruptions of service will occur upon conversions of special access to EELs:

> § 11.3.2 When an existing special access service employed by AT&T is eligible to be converted to EELs, Verizon shall not physically disconnect, separate, alter or change in any other fashion equipment and facilities employed to provide the service being replaced, except upon mutual agreement of both Parties ....

Similar language is proposed for the WorldCom interconnection agreement in § 17 of the UNE Attachment to Verizon VA's proposed contract. Accordingly, AT&T's and WorldCom's respective language on this issue should be rejected by the Commission.

3. Ordering Process (Sub-Issue III-7(b))

AT&T's goal of a "reasonably standardized manner" of conversion has now been accomplished. AT&T Ex. 2 at 24. Verizon VA has a spreadsheet ordering process available to all CLECs on its web page that allows for bulk ordering of service conversions.[22] Verizon VA Ex. 23 at 19. The parties appear close to reaching an agreement on this issue. Still, Verizon VA

[22] One point of contention is AT&T's complaint that Verizon VA's ordering process requires tedious documentation such as access service requests (ASRs) or local service requests (LSRs). Tr. 104. Verizon VA's spreadsheet process does not require the CLECs to submit individual ASRs or LSRs for conversions. Tr. 103-04. Moreover, to be absolutely clear, Verizon VA offers this bulk ordering process for EEL conversions, not other UNEs or new EELs. Verizon VA is not obligated to modify its other UNE ordering processes.

reiterates that it cannot implement bulk ordering procedures for the sole benefit of one requesting carrier. Tr. 103. Verizon VA is also willing to discuss any further recommendations that would benefit all requesting CLECs equally. Tr. 104.

Verizon VA works diligently to modify the billing rates promptly after the conversion of a service. For example, when a CLEC submits a conversion request, it includes a list of circuits for conversion from special access to EELs. Verizon VA processes the request and the new rates become effective on the first day of the next month. Tr. 100. AT&T Witness Pfau stated that the billing change should "become effective on the date that all information is submitted." AT&T Ex. 2 at 27. This position does not account for the actual amount of time needed to make the conversion. Tr. 99-101. Verizon VA's "conversion interval"[23] allows time to make the necessary billing changes. Contrary to Witness Pfau's assertions, this procedure can be beneficial to CLECs as the rates still take effect on the first day of the next month regardless of the length of time necessary to complete the request. Tr. 101. The CLEC has the immediate financial benefit of the conversion, even if the actual terms of the conversion take some time to negotiate or implement. Though a conversion request is essentially no more than a billing change, Verizon VA must still have ample time to make the necessary administrative changes to accommodate a CLEC request. Verizon VA exercises due diligence to accommodate CLEC conversion requests and will continue to do so in the future. Tr. 103-04.

[23] Tr. 98. A conversion interval is the period of time between the when the CLEC first makes the service conversion request and when the new billing rates take effect. Verizon VA has implemented a standard conversion interval, with the new billing rates taking effect on the first day of the next month after the request, to ensure fairness and parity to all requesting carriers. *Id.*

4. Termination Liability (Sub-Issue 7(c))

Verizon VA's procedure for providing special access services and EELs has evolved appropriately as the Commission's regulations have changed. Presently, CLECs are allowed to convert special access services to EELs so long as the local use restrictions and other requirements (*e.g.*, self-certification) of the *Supplemental Order Clarification* are met.[24] Tr. 229. When they do so, however, the Commission has already held that purchasing carriers would have to pay termination fees that applied under volume or term contracts:

> We note, however, that any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts.[25]

Termination liabilities apply as outlined in Verizon VA's FCC Tariff No. 1. The Tariff states in § 7.4.13(A):

> Should a customer terminate service prior to completing the minimum period of the plan term period, termination liability may be applicable.... A customer who downgrades a term plan to shorter duration, changes the system configuration... or disconnects the service will be treated as having terminated the service.

AT&T's attempt to characterize these liabilities as arbitrary and "extortionate" rates is flat wrong. Tr. 105, 225. AT&T purchased long term special access services as a matter of business expediency. Tr. 222. When AT&T signed up for Verizon VA's access long term discount plans, it paid less than it would have paid on shorter service terms. The tariff termination liabilities do nothing more than adjust the arrangement for the term actually utilized by the CLEC. Tr. 213.

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[24] *See Supplemental Order Clarification* at ¶¶ 21-22.

[25] *UNE Remand Order* at n.985. *See PA Verizon § 271 Order* at 43, ¶ 75; *MA Verizon § 271 Order* at 124, ¶ 220; *NY Verizon § 271 Order* at 195, ¶ 390.

The Commission recently has upheld Verizon's termination liability provisions on this specific point when it found that the Commission's "current rules do not require incumbent LECs to waive tariffed termination fees for carriers requesting special access circuit conversion."[26] AT&T has no legal or factual basis to avoid the lawful termination liabilities, and the Commission should reject its request in Section 11.13.6 to do so.

AT&T's counsel implies that Verizon VA was acting unlawfully when years ago it did not provide new EELs or the conversion from special access to EELs.

> AT&T would have liked to use UNEs ... to provide a particular service, but wasn't able to do so because Verizon wasn't making it available, refusing to make them available in the time frame we wanted, or dug its heels in and refused to provide UNEs.

Tr. 220. AT&T's argument misses the point. When AT&T ordered special access services, Verizon VA was under no obligation to provide EELs. AT&T purchased special access services pursuant to Verizon VA's filed tariff and took advantage of discount pricing plans that offered lower rates in return for a longer term commitment. Tr. 224. AT&T made this choice of pricing plans but now wants to revise history, ignore its voluntary choice and have this Commission nullify its obligations to pay termination liabilities if it converts these special access services to EELs.[27] The Commission should not allow AT&T to skirt its lawful obligations.

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[26] *PA Verizon § 271 Order* at ¶ 75.

[27] Counsel for AT&T could not explain why AT&T had not challenged the termination liability tariff provision and conceded that "[i]f AT&T is buying special access from Verizon and agrees to a term plan and does not live up to the obligations under that term plan, then termination liability provisions should apply." Tr. 219. That is precisely the situation here--AT&T took advantage of a term pricing plan and now is trying to renege on its tariff obligation to pay termination liabilities.

C. CONTRACT PROPOSALS

1. AT&T

AT&T's proposed language is deficient in several respects. First, AT&T would obligate Verizon VA to substitute any service with a UNE without reference to applicable law. For example, § 11.13.1 of AT&T's proposed contract states that "Verizon shall permit AT&T to substitute unbundled Network Elements (including Combinations) providing identical functionality for any services, including but not limited to access service, except as explicitly provided by Commission rule or order in effect on the date and time the order for conversion is submitted." Verizon VA provides AT&T with access to UNEs or UNE combinations under § 11 of this contract. AT&T's proposed language transcends the bounds of applicable law.

a) Service Disruption During Conversions (Sub-Issue III-7(a))

Section 11.13.2 of AT&T's proposed interconnection agreement inappropriately states that Verizon VA "shall not physically disconnect, separate, alter or change" any equipment or facilities when converting any service with a UNE. Moreover, Verizon VA must perform all conversions of any type "without disruption of service." *Id.* at § 11.13.4. These absolute prohibitions are not achievable for all types of conversions and should not be forced on Verizon VA as a contractual commitment. Additionally, as Verizon VA Witness Antoniou explained, § 11.13.2 also might apply when Verizon VA replaces (or upgrades) facilities (*e.g.*, replaces copper facilities with fiber facilities). Tr. 247. AT&T's proposed contractual prohibition on a physical alteration or change without AT&T's approval will hamstring normal system upgrades and build-outs. This is another reason why these inflexible and unreasonable provisions should not be adopted.

AT&T's proposed § 11.13.5.2 would require "existing protocols for maintenance and repair of network elements" to be identical to the service replaced. As Verizon Witnesses Gansert and Fox explained (Tr. 258, 262-63) (and as set forth in the discussion section of this Issue III-7), the network elements will be maintained at parity with its retail equivalent and not with the "service being replaced." This is consistent with the Commission's Rule 311(b) that UNEs must be provided "at least equal in quality to that which the incumbent provides to itself."[28]

b) Ordering Process (Sub-Issue III-7(b))

AT&T proposes in § 11.13 *et seq.* unreasonable and unnecessary bulk ordering processes. AT&T's proposed language in § 11.13.5.1 that "the conversion order shall be deemed to have been completed effective upon receipt by [Verizon VA]... and recurring charges" will apply "as of such date" must be rejected as it fails to account for the amount of time needed to process and complete bulk conversion orders. Tr. 99-101. Furthermore, Verizon VA objects to this language because of AT&T's insistence that Verizon VA customize ordering exclusively for AT&T's benefit. A separate bulk ordering process for AT&T would be administratively burdensome to implement and maintain and potentially discriminatory to other CLECs in contravention of Rule 311(a). Verizon VA currently has ordering processes available through its website that allow for the uniform bulk ordering of service conversions. Verizon VA Ex. 23 at 19. These processes are efficient and benefit all CLECs equally. Verizon VA has accepted AT&T's language set out in § 11.13.4 enabling AT&T to request "a number of conversions in a single notice," and Verizon VA has implemented a spreadsheet ordering mechanism to allow bulk conversion orders to be submitted in a single document by all CLECs. This process is nondiscriminatory and works well

[28] *See also UNE Remand Order* at ¶ 490.

for all carriers. If AT&T has additional reasonable proposals that would benefit all carriers equally, Verizon VA will work with AT&T and consider implementing them. Tr. 103-04.

c) Termination Liability (Sub-Issue 7(c))

AT&T states in § 11.13.6 that it should "not be liable for any termination liabilities or other requirements under such contract or Tariff." This language cannot be included in the interconnection agreement. First, the language's application is too broad, applying to any service with UNEs and combinations, not just conversion of special access services to EELs. Also, AT&T is asking this Commission to nullify the express terms of Verizon VA's FCC Tariff No. 1, which lawfully imposes termination liabilities for the conversion of special access services to EELs. While Verizon VA stands by its tariffed termination liabilities, AT&T certainly has the right to challenge the rates imposed by the Tariff through separate procedures established by the Commission.[29] It has not done so, nor has it considered this option. Tr. 227-28. This arbitration proceeding is not the proper forum to challenge the Tariff or its termination liabilities.

In addition, AT&T's added language to § 11.13.6 would effectively bar Verizon VA from enforcing Commission tariffed termination liabilities after the Commission made a final decision, regardless of what the Commission decides.[30]

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[29] *See PA Verizon* § 271 Order at ¶ 75, fn. 268.

[30] § 11.13.6 of AT&T's proposed contract states,

> In the event that the termination of any service that is converted to unbundled Network Elements would otherwise affect AT&T's ability to satisfy any term or volume requirements applicable to existing services pursuant to contract or a Verizon Tariff ***entered into prior to a final determination by the FCC resolving the applicability of interim use restrictions established in the UNE Remand and subsequent orders***, AT&T shall not be liable for any

(continued...)

For these reasons, the Commission should not include this inappropriate language in the interconnection agreement.

2. WorldCom

WorldCom would give effect to its position on conversion with the same contractual provision--§§ 2.4 and 2.4.1 of its proposed interconnection agreement--that it uses to give effect to its UNE Combinations position for Issue III-6. For the same reasons discussed in connection with Issue III-6 on UNE Combinations, these provisions are inappropriate for service conversions. Moreover, WorldCom's amended proposed provisions in §§ 2.4.2 and 2.4.5[31] inappropriately request multiplexing/concentrating and digital cross connection facilities at the termination of transport (Verizon VA discusses these concerns in Issue IV-18).

3. Verizon VA

a) AT&T

1) Service Disruption During Conversions (Sub-Issue III-7(a))

Verizon VA has proposed § 11.13 to address AT&T's desire to incorporate terms and conditions for special access conversions to EELs. Verizon VA has modified its proposed contractual provision regarding conversions of special access services to EELs to commit to no disruption of service during those conversions:

> Proposed § 11.13.2. When an existing special access service employed by AT&T is eligible to be converted to EELs, Verizon shall not physically disconnect, separate, alter or change in any

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> termination liabilities or other requirements under such contract or Tariff.

(Emphasis added).

[31] *See* Letter to Magalie R. Salas, Esq., Secretary, Federal Communications Commission from Mark D. Schneider, Esq. on behalf of WorldCom, July 19, 2001 at 6.

> other fashion equipment and facilities employed to provide the service being replaced, except upon mutual agreement of both Parties, e.g. in the event that the conversion cannot be accomplished without disconnecting, separating or altering such equipment or facilities.

This provision meets AT&T's (and WorldCom's) concerns about disruptions of service during conversions of special access services to EELs and obviates any need for AT&T's open-ended language in its proposed § 11.13.2 that by its terms would apply to all conversions to UNEs, including those that could reasonably be expected to involve service disruptions.

2) Ordering Process (Sub-Issue III-7(b))

In addition, Verizon VA has proposed new contractual language in proposed § 11.13.3 to assure bulk conversions electronically and the elimination of individual LSRs and ASRs.

3) Termination Liability (Sub-Issue III-7(c))

The termination liabilities imposed under Verizon VA's access tariff for termination of special access services, in connection with a conversion of such access services to EELs, are not a contractual matter. Rather, this liability is directly governed by the terms of Verizon VA's FCC Tariff No. 1, and Verizon VA applies the tariff termination liabilities consistently to all carriers. This ensures fairness to all requesting carriers and fulfills Verizon VA's obligations under the law.

b) WorldCom

Verizon VA's proposed WorldCom contract, UNE Attachment §§ 1.1-1.7, and 17, support its position on conversion of special access services to UNEs. Similar to the proposal to AT&T, Verizon VA will provide UNEs and UNE Combinations pursuant to applicable law as it may change from time to time (§§ 1.1 *et seq.*). Thus, if the Commission's "local use restrictions" are modified, these provisions will assure that Verizon VA's conversion of special access services to EELs will conform to the change in law.

As discussed above regarding AT&T, Verizon VA has proposed new contractual provisions on service disruptions during conversions and on the bulk ordering processes. These provisions are set forth in § 17 in Verizon VA's proposed WorldCom contract.